

FROM : Kurt S. Myers

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KURT S. MYERS

7634 Braesdale Lane
Houston, Texas 77071
(713) 774-7152

Organizational Consulting

Patent - Trademark Law

FAX COVER SHEET

DATE: June 21, 2005

TO: Examiner Hezron Williams
Art Unit 2856
Re: Serial No. 10/716,248
Filed 11/17/03
Title: Subsea Vehicle Assisted Pipeline Commissioning Method

Message

Enclosed is a Fax Response to Interview (5 pages) in the above-identified application.

I am working on the response in Serial No. 10/365,832; however, it will be sent separately later.

Thank you.

Kurt S. Myers

CONFIDENTIALITY NOTICE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: §
David M. Tucker et al. § Art Unit 2856
Serial No: 10/716,248 § Examiner:
Filed: 02/13/2003 § Garber, Charles D.
Title: Subsea Vehicle Assisted § Attorney Docket
Pipeline Commissioning Method § VCSre

FAX RESPONSE TO INTERVIEW

Commissioner for Patents
PO Box 1450
Alexandria, VA 22312-1450

Sir:

In response to the interview kindly granted by Examiners Garber and Williams on June 16, 2005, the following is Applicants response and arguments "that the combination of references do not teach all the limitations of the claims".

At the interview Examiner Garber argued that the invention (which will be elaborated later) is obvious over the patent to Bliss in view of Graves and Matthews. With this conclusion, Applicants respectfully disagree. Bliss discloses the method of pigging, filling, and pressure testing a pipeline; however, the pump for testing is NOT shown in Bliss as being subsea but is shown above the surface of the water on an operating platform. This difference over the claimed invention was acknowledged at the interview and in the Final Rejection (see page 5: "Bliss however does not teach the launcher is submerged and that a SV (or submerged or submersible vehicle) is used to operate the pump." Graves

discloses a skid having a pump that may be operated by a subsurface vehicle (SV) to pumped water into a pipeline to force a pig to the end of the pipeline. However, Graves does NOT disclose testing of the pipeline, which was acknowledged at the interview. It was the contention of Examiner Garber that one skilled in the art knowing that testing is desired and disclosed by Bliss and knowing that a pump on an apparatus operated by an SV could be used to pump water into a pipeline would conclude that that the hydrostatic testing of a pipeline subsea with a pump operated by an SV is obvious even in view of the significant difference in the type of pump and the application of the pump. Applicants respectfully disagree.

The patent to Matthews was acknowledged as disclosing a pipeline having both ends (initially) on the seafloor and having a pump at one end. However, the pump is pumping water OUT OF the pipeline and does NOT disclose hydrostatic testing a pipeline. In fact the Matthews patent is directed to dewatering the line to raise one end (the damaged end) to the surface.

At the interview, the first invention considered was of that of Claim 1. It was pointed out that Claim 1 in the reissue was broaden only by inserting "one or more" before -pumps- in line 5 of Claim 1 in the patent and inserting "to assure" before -that- in line 10 of claim 1. The difference between the invention of Claim 1 and the combination of Bliss and Graves is specifically found in the recitation: "using said SV to pump more water into said pipeline to a test pressure and maintaining said pressure to assure that there are no leaks in said pipeline." The argument made at the interview by Examiner Garber was that adding more

water was taught by Bliss as part of hydrostatic testing. However, Applicants objected to such an understanding of the references as involving hindsight and is arrived at only in view of the invention and/or teaching of Applicants as set forth in their specification. It is Applicants position that the references fail to disclose using a SV to pump water into a pipeline to test pressure integrity and that the proposed combination of references fail to make obvious the invention as recited in Claim 1.

Examiner Garber then directed the discussion to Claim 7. The invention of Claim 7 is:

A method for the hydrostatic testing of a pipeline on the seafloor comprising:

using a submersible vehicle (SV) to operate one or more pumps on a fill and test package to raise the internal pressure of the pipeline sufficiently for hydrostatic testing.

It is Applicants position that this language clearly differs over the references and the references fail to disclose using a SV to operate one or more pumps on a fill and test package to raise the internal pressure of the pipeline sufficiently for hydrostatic testing and that the proposed combination of references fail to make obvious the invention as recited in Claim 7.

Examiner Williams agreed to review the art and the rejections made. Also it was agreed that Applicants would submit arguments, which have been made above. Examiner Williams also agreed that attention should be paid to the evidence. In that regard, it is submitted that the evidence shows that the

essential combination of references, namely Bliss and Graves, considered in the patentability issue of the inventions as recited in the claims of the patent and the claims of the invention as recited in the reissue claims are the same. The language of the claims of the patent and the claims of the reissue that particularly points out the difference of the invention over the art is the same.

The conclusions of the Examiner as to obviousness while subjective should be consistent.

Further, the precedent of cases heard by the Board and the courts are evidence of resolving the obviousness question. In this regard, the Examiners attention is directed to all three opinions *In re Oetiker*, 977 F.2nd 1443 (Fed. Cir. 1992). The opinion of Judge Newman states: "There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the Applicant's invention itself." Judge Nies' concurring opinion expresses that the language of Judge Newman is too restrictive but suggests language found in other decisions as appropriate stating: "We have stated, for example, that the test is: ""whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention,"" and ""what the combined teachings ... would have suggested to one of ordinary skill in the art,"". We have also stated that ""the prior art as a whole must suggest the desirability ... of making the combination." Judge Plager's concurring opinion states: "The burden is on the Commissioner to establish that the applicant is not entitled under the law to a patent." It is respectfully submitted that the proposed

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combination of references applied to the claims by the Examiner in this application fails to establish obviousness under all three tests, however expressed.

Respectfully submitted,



Kurt S. Myers
Attorney for Applicants
Registration No. 20,244
7634 Braesdale
Houston, Texas 77071
(713) 774-7152

FAX RESPONSE

I hereby certify that this Fax Response to Interview is being faxed to Examiner Williams at the U.S. Patent Office at 1-571-273-2208 on June 21, 2005.



Kurt S. Myers